

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

MATTHEW HOWARD,

Case No.: 17-cr-00081-wmc

Defendant.

GOVERNMENT SENTENCING MEMO

The United States of America, by Timothy M. O'Shea, Acting United States Attorney for the Western District of Wisconsin, by Julie S. Pfluger, an Assistant United States Attorney in that district, files this brief memo for the Court's consideration before re-sentencing on October 15, 2021.

As noted in previous government filings, the government believes that the PSR correctly applies the cross-reference for production of child pornography. The defendant disagrees because he believes the videos that the defendant created do not qualify as child pornography. The PSR calculated guidelines using both the USSG § 2G2.2(c)(1) cross-reference to USSG § 2G2.1(a) for the production of child pornography (total offense level 46, ¶ 64, guideline of 100 years, ¶ 180), and using USSG § 2G2.2(a)(2) (with no cross-reference) for the distribution/receipt of child pornography (total offense level 40, ¶ 65, guideline range of 292 to 365 months, ¶ 180).

While the government believes that the cross-reference does apply, the government is also aware that the application of the cross-reference will raise issues on appeal. Because the guideline range without using the cross-reference captures what the government will be requesting – which is the same sentence as the Court originally imposed – and avoids potential

issues on appeal dealing with the cross-reference, the government requests that the Court use the guideline range calculated without applying the cross-reference.

Dated this 13th day of October 2021.

Respectfully submitted,

TIMOTHY M. O'SHEA
Acting United States Attorney

By: /s/

JULIE S. PFLUGER
Assistant U.S. Attorney